

Chapter VI

Conclusions and Recommendations

Child support guidelines are an important instrument in reducing child poverty, improving the self sufficiency of single parent households, and generally providing for the economic well-being of children. Further, fair and equitable guidelines help promote voluntary settlement of legal actions involving child support, thereby reducing the demands on court time and mitigating the adversarial impact of such proceedings.

The Michigan Supreme State Court Administrative Office (SCAO) first promulgated a statewide child support guideline in 1987. The original formula was developed using evidence on child-rearing expenditures available at that time. The income brackets in the formula have been updated almost annually for inflation, but the core formula has not been revised. SCAO contracted with Policy Studies Inc. to determine whether the current Michigan Child Support Formula is in alignment with recent economic estimates of child-rearing expenditures.

This study considers several components of child support guidelines.

- ✓ The economic evidence on child-rearing costs available for the development of child support formulas
- ✓ The child support guidelines model, which is the lifeline of the formula and its parameters
- ✓ The adjustments for special factors considered in the child support formula
- ✓ The periodic updating of the child support formula

NEW EVIDENCE ON CHILD-REARING EXPENDITURES

Historical Overview

The existing Michigan Formula is based on the best economic evidence of child-rearing expenditures available when the formula was first developed in 1986. As discussed in Chapter II, those estimates were developed by Dr. Thomas Espenshade, an economist with the Urban Institute. Dr. Espenshade's estimates formed the basis of the majority of state child support guidelines when states first promulgated them. They also formed the basis of the prototype Child Support Schedule recommended by the 1984-87 National Advisory Panel on Child Support appointed by the Federal Office of Child Support Enforcement at the request of the 1983 US House Ways and Means Committee.



Michigan has dutifully updated the income brackets used in its child support formula for inflation almost annually. The existing Michigan Formula is based on Dr. Espenshade's estimates updated to 2000 price levels. As discussed in Chapter III, although many states have updated their schedules at sometime since they first promulgated them, few state child support guidelines reflect recent price levels. Michigan is among a handful of states with guidelines reflective of recent price levels. States are more apt to update their schedule once every four years when they conduct their federally required quadrennial guidelines review. As part of that review, states must also consider recent economic data on child-rearing expenditures.

Overview of Methodologies to Estimate Child-Rearing Costs

Detailed information about how child-rearing costs are estimated is provided in Chapter II. Dr. Espenshade based his estimates on the Engel methodology. An economic methodology is necessary to separate the child's share of total household expenditures from the parents' share. Many household expenditures are not specifically made for the children or the adults, rather they are made for both (e.g., housing, food and transportation). The simplest methodology for separating the child and parents' share would be to average total household expenditures across all household members. This is called a "per capita" approach. There are also marginal cost approaches which measure the difference between two equally well off households: (a) one with children; and, (b) the other without children. The difference in expenditures between these households is the amount of expenditures on the child. Different measurements are used to capture whether households are equally well off. The Engel estimator uses expenditures on food shares. Another common marginal cost estimator, the Rothbarth estimator, uses expenditures on adult goods such as adult clothing.

The per capita approach results in the child's share being equivalent to each parent's share. Most marginal cost approaches theoretically result in the child's share being less than the parent's share.

New Evidence on Child-Rearing Costs

Dr. Espenshade's estimates were published in 1984 using 1972-73 data. Since 1984, several studies have updated his estimates.

- ✓ In 1990, Dr. David Betson, Professor of Economics, University of Notre Dame, was contracted by the US Department of Health and Human Services to develop new estimates of child-rearing expenditures. The US Department of Health and Human Services contracted with Dr. Betson in response to a congressional mandate in 1988 to develop new estimates of child-rearing expenditures. The purpose of this mandate was to provide information to states in order to assist them with updating their child support guidelines. Dr. Betson used 1980-86 data to develop estimates based on five different methodologies. One of those methodologies was the same methodology used by Dr.

Espenshade to develop his estimates, the Engel estimator. Another was the Rothbarth estimator. Of all of the five methodologies used by Dr. Betson for this study, the Engel and the Rothbarth were the most sound, but the results of the Engel estimator were thought to be unreasonably high because they approached per capita amounts. Subsequently, 19 states have updated their child support guidelines to include the Rothbarth estimator. However, as discussed in Chapter II, the Lewin Report suggests that the Rothbarth estimator is likely to underestimate the costs of child rearing. They further suggest that the true costs of child rearing are somewhere between those based on the Engel and Rothbarth estimators.

- ✓ In 2000, Dr. David Betson received a grant from the University of Wisconsin at Madison Institute for Research on Poverty to update his economic estimates of child-rearing expenditures using more recent data (1996-98). Preliminary results of those estimates were published in a report by the State of California Judicial Council in 2001 as part of its quadrennial review of its child support guidelines. Again, Dr Betson estimated child-rearing costs using both the Engel and Rothbarth estimator.
- ✓ The US Department of Agriculture develops annual estimates of child-rearing expenditures using 1990-92 data. They develop separate estimates of child-rearing costs for several expenditure categories (e.g., housing, food, and transportation), then sum them to arrive at total costs. Costs for each expenditure category are estimated using different methodologies. Housing, transportation and miscellaneous expenses are estimated using a per capita approach.

Comparing New Estimates to Existing Michigan Formula

Child support formulas were built using the following estimates of child-rearing costs with the purpose of comparing them to the existing Michigan Formula. All of the 2001 Betson estimates were selected because they reflect the most recent evidence on child-rearing costs. Similarly, the 2000 USDA estimates were used because they are recent. The 1990 Betson-Rothbarth estimator updated to 2001 price levels was also selected because it is the most commonly used estimator in child support guidelines today.

In sum, the existing Michigan Formula was compared to guidelines amounts using the:

- ✓ the 1990 Betson-Rothbarth estimates developed from 1980-86 data;
- ✓ the 2001 Betson-Rothbarth estimates developed from 1996-98 data;
- ✓ the 2001 Betson-Engel estimates developed from 1996-98 data; and
- ✓ the 2000 USDA estimates developed from 1990-92 data.

All of the estimates were updated to current price levels.



Comparisons among Estimators. The results of the comparisons (see Chapter II exhibits) show that generally child support formulas based on the Betson-Engel and Betson-USDA track higher than those based on the Betson-Rothbarth estimators. This is not surprising since the Engel methodology is generally believed to overestimate child-rearing costs and the Rothbarth methodology is generally believed to underestimate child-rearing costs. Since the USDA methodology also partially relies on a per capita approach it is not surprising that a child support formula based on its estimates of child-rearing costs tracks higher. Per capita amounts are more than marginal cost amounts in economic theory.

Comparisons to Michigan. Generally, the Michigan Formula tracks close to a formula based on the Betson-Rothbarth estimators. The few notable exceptions are at higher incomes and for three children. At these exceptions, the Michigan Formula tracks above the Betson-Rothbarth estimators but below the other estimators. In short, the Michigan Formula tracks within the range of estimators.

Recommendation 1: Update the Michigan Child Support Formula to consider more recent economic estimates of child-rearing expenditures, specifically either the 2001 Betson-Engel or Betson-Rothbarth estimates developed from 1996-98 data and updated to current price levels.

Recommendation Concerning New Evidence on Child-Rearing Costs

In general, the current Michigan Formula falls within range of the most recent economic estimates of child-rearing expenditures. Nonetheless, assuming that the objective is to use more current data as well as theoretically sound and empirically plausible estimates, Michigan should adopt a formula based on Dr. Betson's Engel or Rothbarth estimates developed from 1996-98 data updated to current price levels.

In deciding which estimator is more appropriate for Michigan, the following factors should be considered.

- ✓ The existing Michigan Formula is based on the Espenshade-Engel estimates.
- ✓ There are eight states (including Michigan) that use the Espenshade-Engel estimates. There are 19 states that use the Betson-Rothbarth estimates.
- ✓ A formula based on the recent Betson-Engel estimates would generally increase orders. In some situations, the increase will be negligible. In other situations, the increase could be more substantial (e.g., 8% of obligor net income).
- ✓ A formula based on the recent Betson-Rothbarth estimates would generally increase orders for one child, stay about the same for two children at low and mid-incomes; and, decrease order amounts for three and more children. There is one notable exception: at high incomes, all order amounts would decrease.

- ✓ If Michigan is like many states, most orders involve one or two children.⁶⁸
- ✓ On the one hand, adoption of the Betson-Engel estimates will likely increase the gap between the Michigan Formula and those of bordering states. (Comparisons with bordering states are provided in Chapter III.) Currently, Michigan is generally on the high end. The Betson-Rothbarth estimates would likely decrease the gap. In the future, we anticipate states will update using the Betson-Rothbarth estimates since many state guidelines are based on it already. On the other hand, as seen in Chapter III, order amounts under Delaware and Massachusetts are mostly higher than Michigan. In other words, the comparisons look differently depending on which states are used as benchmarks.
- ✓ The Lewin Group believes that the Engel estimator is the upper bound and the Rothbarth estimator is the lower bound and the true costs of child rearing is somewhere between.
- ✓ Dr. Betson believes that the Rothbarth estimator is the most theoretically sound and yields the most plausible results of all the methods he has used including the Engel estimator.

Base support tables for the Engel and Rothbarth estimators are provided in Appendix IV.

GUIDELINES MODELS

This study includes an examination of child support guidelines models used in other states and recently developed models. The existing Michigan Formula is based on the Income Shares model. This is one of the guidelines model recommended by the 1983-87 National Advisory Panel on Child Support. The precept of the Income Shares Model is that the children should be entitled to the same amount expenditures the children would have received if the parents lived together. The Income Shares Model currently forms the basis of 33 state child support guidelines.

Considerations of Original Michigan Committee

The original Michigan child support guidelines committee examined several guidelines models including many of the ones currently used in other states today. The original Michigan child support guidelines committee also considered other guidelines models that have been implemented. Two of the critical factors that led to the committee's choice of the Income Shares Models over other models were:

- ✓ The Income Shares Model not only considers both parents' incomes but the parents' relative incomes in the calculation of support. The committee perceived this as being an equitable approach.

⁶⁸ For example, a recent case file review of almost 1,000 cases in California found that 60 percent of newly established support orders were for one child and 28 percent were for two children.



- ✓ Another consideration of the committee was that a statewide guideline formula (hence the guideline model) should not be based on the children's minimum needs.

New Guidelines Models

They are two new alternative guidelines models that recently have been considered or discussed by guidelines review committees in other states.

- ✓ *The Cost Shares Model.* The Cost Shares Model stems from the model developed by the Children's Rights Council, a noncustodial parents' advocacy group. It has been refined by Mark Rogers, an economic consultant based in Georgia.
- ✓ *American Law Institute (ALI) model.* The ALI comprises legal scholars, practicing attorneys and others who promote the simplification and clarification of the law. The ALI model is still in its conceptualization stage; hence, a well-defined formula has not been fully developed.

At this time, no state has adopted either of these model although Massachusetts and the District of Columbia's hybrid between the Income Shares and the percentage-of-obligor income model have been considered by the ALI as a prototype of it conceptual guidelines model. The Cost Shares Model has been introduced as legislative bills in two states during this session.

Cost Shares Model

The biggest difference between the Income Shares and Costs Shares model is that the Income Shares model assumes the child should be entitled to the same standard of living the child would receive if the parents lived together. In contrast, the Cost Shares model recognizes that the same standard of living the parents are able to afford when they live together, cannot be achieved when there are two households. The child's standard of living consequentially is also lowered in the Cost Shares Model. Further, as evident in Chapter IV, the Cost Shares model frequently results in order amounts below the poverty level of the children. These conflict with the premises on which the original Michigan Formula was founded.

The goal of this Manual [Formula] is not to establish minimum child support amounts, based upon poverty level figures. Rather this Manual recognizes that expenditures to children are dependent upon resources available to intact families given their individual family circumstances.⁶⁹

⁶⁹ Michigan Child Support Guidelines Committee (1986), page 6.

Recommendations about Alternative Guidelines Models

In conclusion, at this time, the Cost Shares Model nor the ALI Model appear to provide more equitable and just child support orders than the Income Shares Model. The Cost Shares Model fringes on being a minimum needs standard. The ALI Model is not well-defined and exists more as a concept.

Recommendation 2: Continue to monitor new, alternative child support guidelines models as part of the quadrennial review to ensure that Michigan bases its child support guideline formula on a model aimed at providing the most equitable and just child support orders possible.

ADJUSTMENTS FOR SPECIAL FACTORS

The Michigan Formula considers a large number of special factors in the calculation of child support. As a consequence, the special factors included in the formula are reviewed to consider whether their formulaic adjustments would be affected by incorporating new economic estimates of child-rearing expenditures or should be updated for other economic reasons. After a careful review of all of the factors, we identified several special factors that may be affected. They include:

- ✓ age of the child;
- ✓ the child's health care costs;
- ✓ adjustments for low-income obligors;
- ✓ treatment of high incomes; and
- ✓ adjustments for other children and minor children.

Age of the Child

The existing Michigan Formula is based on child-rearing expenditures for children age 12-17 years old. The rationale for basing it on older children rather than the amount of average expenditures for children age 0-17 years old was that the average was likely to underestimate child-rearing costs for children 0-12 years old. The original Committee was skeptical that 1972-73 data, which was the data source of the original and current Formula, captured all of the incidental child care expenses encountered for 0-12 year old children (e.g., child care expenses while the custodial parent attended to other commitments such as doctor's appointments). In the 1970s fewer women worked outside the home, so there was less of a need for child care in general. Further, there was less awareness about the issues of latchkey children and today's social standard that children less than 12 years old should not be left unsupervised had not been established yet.



Recommendation 3: Abandon a schedule based on child-rearing expenditures for children age 12-17 and adopt a schedule that considers average child-rearing expenditures for children ages 0-17.

Child's Medical Expenses

This study considered several different types of medical expenses incurred on behalf of the children.

- ✓ The out-of-pocket expense for the health insurance premium.
- ✓ Ordinary medical expenses that are incurred for most children (e.g., band-aids and over-the-counter medicines).
- ✓ Extraordinary medical expenses that are incurred for some children. These are uninsured costs for medical expenses such as eye care, orthodontia, asthma treatments and other expenses.

In addition, this study considers the recent recommendations of the Medical Child Support Working Group, which was effective in achieving a Federal mandate that all states adopt the National Medical Support Notice.

The Health Insurance Premium

The existing Michigan Formula subtracts the child's share of the health insurance premium from the parent's income prior to the calculation of the support order amount. This is inconsistent with how child-rearing expenditures are measured and the Income Shares model. The health insurance premium is included with other medical expenses in the data. It is an expenditure category similar to extraordinary medical expenses. It is not subtracted from the parents' income before arriving at the estimate of child-rearing expenditures.

Recommendation 4: Prorate the child's share of the health insurance premium to the parents according to income similar to the treatment of the child's extraordinary medical expenses and work-related child care expenses.

Ordinary Medical Expenses

Michigan currently provides an add-on of \$3 to \$10.50 per week depending on the number of the children to the noncustodial parent's obligation for ordinary medical expenses (e.g., band-aids and vitamins). It is assumed that the custodial parent spends an equivalent amount per week for such expenditures. It is not clear how these amounts were derived. No other states has a similar add-on. Most Income Shares states incorporate a small amount

in their base support schedules for ordinary medical expenses. This allows ordinary medical expenses to be apportioned to the parents according to income rather than equally divided between the parents. We recommend that Michigan adopt a similar approach.

***Recommendation 5:* Incorporate an amount for the children’s ordinary medical expenses in the base child support calculation so it is apportioned between the parents.**

Extraordinary Medical Expenses

A clear quantitative definition of extraordinary medical expenses could be useful to decision-makers. The existing definition is very thorough but qualitative. For example, the current Michigan Formula defines health care as

the products or services provided or prescribed by a person or organization licensed or legally authorized to provide or prescribe human health care products or services, including, but not limited to, the following professionals: chiropractors, dentists, oral surgeons, orthodontists, prosthodontists, periodontists,....

***Recommendation 6:* Clarify the definition of extraordinary medical expenses such that it is based on a quantifiable amount such as medical expenses in excess of \$250 per child per year. Yet, retain some of the language describing what types of medical care would constitute extraordinary medical expenses.**

A quantitative definition similar to those in other states would help clearly distinguish extraordinary from ordinary medical expenses.

Medical Child Support Working Group’s Recommendations

None of recommendations in this report pertaining to the child’s health care costs are inconsistent with those of the Medical Child Support Working Group. In fact, the existing treatment of the child’s medical expenses is not inconsistent with the Work Group’s recommendations pertaining to **how** the child’s medical expenses should be included in the calculation of child support. The Michigan Formula, however, may have to be modified if Michigan decides to adopt the Working Group’s recommendation as to **when** private health insurance costs are considered reasonable. Specifically, the Working Group recommends that a health insurance premium in excess of five percent of the parent’s gross income be used as a standard for unreasonableness; and, that a parent with after-tax income less than 133 percent of the poverty not be asked to provide private health insurance for the child unless there is no cost.



Recommendation 7: Review the Medical Support Working Group's Recommendations to determine whether changes are appropriate and necessary to the Michigan Guideline.

Low-Income Noncustodial Parents

Most states including Michigan provide an adjustment to low-income noncustodial parents. This helps ensure that the noncustodial parent is not impoverished due to child support.

On the one hand, the existing Michigan Formula does not always leave the noncustodial parent with enough income after payment of taxes and child support to subsist. Further, in some situations, the existing formula does not provide work incentives since every additional dollar of net income earned by the noncustodial parent is assigned to the child support order. On the other hand, the existing Michigan Formula recognizes that the custodial parent-household may also be low income in cases that involve a low-income noncustodial parent. Few states explicitly do this.

There are many factors outside the low-income adjustment that impact how the adjustment functions; and in turn, affect the economic well-being of noncustodial parents and the custodial parent family. States vary widely in these factors. Due to these differences, a “one-size fits all” approach to low-income adjustments in state child support guidelines is not appropriate. Michigan as well as other states should consider the impact of these outside factors in developing a low-income adjustment that is appropriate for their state.

- ✓ *Whether income is imputed to non-working custodial parents.* The amount of the custodial parent's income is a critical factor in determining a child support obligation amount in Income Shares states. Therefore, if a state routinely imputes income to non-working custodial parents, particularly TANF cases, it could affect the amount of the order amount applied to low-income noncustodial parents. This has been an issue in some states where the low-income adjustment was developed assuming that the custodial parent income was zero.
- ✓ *When income is imputed to noncustodial parent and at what level.* Most states will impute income to the noncustodial parent if income information is unavailable or the noncustodial parent is unemployed or underemployed.⁷⁰ As a result, many low-income noncustodial parents may be subject to income imputation. For example, consider a noncustodial parent whose total annual earnings are less than the poverty level because the noncustodial parent is seasonally employed or erratically employed. In many states,

⁷⁰ Most states also provide exceptions for the parents' physical or mental conditions that prevent full-time employment or when the noncustodial parent is the primary caregiver to someone with special needs.

income would be imputed to the noncustodial parent assuming year-round full-time employment. In other words, income imputation policy may also impact what income is used to establish an order amount for a low-income noncustodial parent. This has been an issue in some states that have a low-income adjustment for very low incomes, but since income is routinely imputed at full-time, minimum wage, the adjustment has no impact.

- ✓ *Wage amounts of low-income parents.* Legal minimum wage amounts are important because they are frequently used in income imputation. The Federal minimum wage is currently \$5.15 per hour. Some states set higher minimum wage amounts. Some states also consider the average wage rate of TANF recipients. Although most states have low-income adjustments, fewer apply the adjustment to full-time minimum wage income.
- ✓ *The ability-to-pay of NCPs who cannot work.* Some noncustodial parents cannot work due to mental or physical incapacity. In cases where the disability is permanent, the noncustodial parent may have a fixed income that is below or near the poverty level. Hence, that income may also be below full-time minimum wage earnings. Others may be minors and still in school. In addition, there is the issue of incarcerated noncustodial parents. In short, these are the cases where income may not be imputed. Some states distinguish between these groups in developing their low-income adjustment, particularly because this is the group that is most likely to be affected by minimum order amounts. In addition, some states consider what an appropriate token amount should be among noncustodial parents who are unlikely to ever have income above poverty.
- ✓ *How Default Orders Are Entered.* Income is frequently imputed to the noncustodial parent in child support orders entered by default because income information is not available. Some states routinely impute income in these situations at full-time minimum wage earnings. Some child support administrators are concerned that if a low-income adjustment is applicable to full-time minimum wage earners and income is routinely imputed at minimum wage, it may encourage noncustodial parents to not provide income information and increase the number of orders entered through default.
- ✓ *The Self Support Reserve.* Some low-income adjustments only consider whether the noncustodial parent's after-tax, after-payment of child support income is above the self support reserve. Other states consider both parent's after-tax, after-child support income. In addition, many states have struggled with what is an appropriate self support reserve amount. These issues are particularly difficult in cases where both parents are low income and there is not enough combined income to maintain two households above poverty. Another issue is whether the noncustodial parent's self support reserve should be based on the poverty guidelines for one person since some evidence suggests that low-income noncustodial parents may not be living alone.



- ✓ *Add-on for Child Care Expenses, Extraordinary Medical Expenses and Other Factors.* Some states make the low-income adjustment to base support then add-on these adjustments for special factors. Other states make the low-income adjustment after total child support is calculated. As discussed in Chapter V, there are reasons to justify both approaches.

In summary, there are many factors that should be considered in developing a low-income adjustment for noncustodial parents. Many of these factors revolve around a state's income imputation policies and practices. These can undermine the purposes of a low-income adjustment. Still other factors (e.g., self support reserve amounts, whether both parents or just the noncustodial parent's after-child support income are considered and token order amounts) require difficult policy decisions.

Recommendation 8: The Formula Subcommittee should study the issues of low-income parents in more detail and develop a recommendation for a new adjustment for low-income parents that is equitable and fair to both households.

High Income Cases

The current Michigan Formula is applicable to an infinite amount of income. The same formula applies to net combined incomes of \$1,733 per week is applied to net incomes of \$10,000 per week. The economic data used to estimate child-rearing costs is limited by there being a small sample size of higher incomes. In fact, the most recent Betson estimates only go to parent's combined net incomes of \$125,000 per year. Due to this limitation, order amounts above the levels where there is not adequate economic data should be left to judicial discretion, but the order amount should not be less than the highest income bracket appearing in the table.

Recommendation 9: High Income. Eliminate the formula and use judicial discretion for incomes above the highest income bracket appearing in the table, but the order amount cannot be lower than the highest amount appearing in the total child support table plus the health care supplement or amount based on an updated schedule.

Adjustments for Other Minor Children and Stepchildren

Since the adjustment tables for other minor children and stepchildren depend on the percentages in the Total Child Support Tables, these tables will also need to be updated if the Michigan Formula incorporates new economic estimates of child-rearing costs.

Recommendation 10: If the guidelines formula percentages are changed, the percentage reductions for other children and stepchildren will need to be changed accordingly.

Shared-parenting Time

As discussed in Chapter V, most states struggle with how to adjust for shared-parenting time to limit gaming; that is, the negotiation of time for money in the establishment of the support order amount and the shared-parenting time adjustment. The “cubed formula” introduced at the March 12, 2002 Formula Subcommittee appears to be an improvement over the current formula.

Recommendation 11: The “cubed formula” for adjusting for shared economic responsibility examined by The Michigan Formula Subcommittee should be considered as a alternative to the current formula.

Annual Updating Method

The income brackets in the Michigan Guideline Formula are updated annually for changes in the CPI-U for the Detroit-Flint-Ann Arbor area. There is no compelling reason to change the index used for the update.

Recommendation 12: *Annual Updating method.* Continue to use the current updating method



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